

The state of the Case concerning the late Earle of Lindseys drayning the Fennes between Borne, Boston, and Lincoln.

The Case concerning the late Earle of Lindseys drayning the Fennes between Borne, Boston, and Lincoln more truly stated.



THE Adventurers, with Robert late E. of Lindsey, in drayning the Fennes, doe finde that their credits, and their Cause doth suffer much by the reports of some, would have the world be- lieve their undertakings to be a project, and so looked on as an injury to the Owners and Commoners, and a prejudice to the Common-wealth: They have therefore thought fit to vindicate themselves and their Cause, by truly stating their Case, most first whereof upon a former Examination before a Committee of Parliament, wherein M. Earl had the Chaire, was proved, and the rest they are ready to make good, in the following non obstante Acts of Parliament, which could not be done without injury to the owners and Commoners.

THE undertakers credits suffer not but by their owne ill acts; there designe of drayning being proved a project before a Committee of Parliament: wherein Mr. Earl had the chaire: where it was proved by Deed enrolled, and other Records, that they bribed the King, and the Lords of the Conncell with our Lands, to help on their designe, and by their last will gave away our Lands before the contract made with the Earle and that gift stood good: and sold our lands for great summes of money, the buyers to bear the charge of the drayning: the Courtiers filled their purses by our Lands, without consideration given or done. The money being received, the work must be carried on in the non obstante Acts of Parliament, which could not be done without injury to the owners and Commoners.

\* A Deed enrolled 21 July 7 Edw.  
\* At a Saloon of Sewers held June 14. 1631. they gave the King 3000 Acres.  
\* Witness Sir Edw. Herons, and others Deeds.

*To the first.*

1. That the late King was invited by a publicke Letter from the Commissioners of Sewers, and Commissioners of the Peace in that Country, to recommend some Person of Honour and skil, to undertake the Drayning of the said Fennies, hurtfully surrounded by waters as a work honourable and profitable to the Common wealth.

1. That the King was invited by the Commissioners, few of them being owners and commoners, was nothing binding to the non-consenting owners and commoners, being many thousands, it being usuall for the King and his commissioners to court each other. That the Earle was a man of honour, we deny not; but not of skill and purse to carry on such a work.

*To the second.*

2. Upon receipt of the said letter, Robert late Earle of *Lindsey* was recommended by a Letter from the late King, unto the Countrey, to be the Undertaker, and was received to be Undertaker at a publicke session of Sewers held at *Sleaford*, in a generall assembly of Lords, Owners and Commoners, no man dissenting; which shewes that no compulsion, or power was used to inforce the Country: This Letter remains with *M. Ellis* also.

2. The Kings Letters commended \* others to be undertakers besides the Earle; it may be the Commissioners desired the Earle alone, in hope to have the better. prevailed for the countreys good\*; but it seemeth the Earle (not unknowne to the King, though to the Commissioners) had combined with Sir *William Killebrew* and *Robert Long*, Esqu. underhand to be joynt undertakers with him; so that the Earle had the name alone, that his power might the

more prevaile in a countrey where he was so powerfull Thus the Commissioners were Court-blinded, and smoothly complemented into errours; such whose eyes it pleased God to open, whereby they saw into the evill of the designe, was put out of the commission, and the undertakers friends, servants, and strangers, onely kept in. Let the undertakers prove that one in ten freely consented, and we will yield our interest. The Kings Letter we have herewith printed, which explains the power they proceeded by.

\* Read the Letter.

\* Witness the Deed enrolled.

3. Some years before the Contract there was a tax laid of 13 s 4 d an Acre, to raise mony towards the Drayning of the said Fennes, and this tax was laid by 37 Commissioners, most of them prime Gentlemen of that Country, and many of them Lords, and Owners of the said Fennes, and but two strangers amongst the 37 Commissioners: This shewes that those Fennes did need Drayning, or why taxed? and after the day was passed for payment of the said tax of 13 s 4 d an acre, and the mony not payd. 32 Commissioners of Sewers, many of them the Prime Gentlemen of the Country, did meet at Sleaford, and there in a Generall assembly of Lords, Owners, and Commoners, these 32 Commissioners doe contract and sell unto the said Earle twenty four thousand Acres of the said Fenne-Lands as a recompence for his charge and hazard in performing that work: thirty thousand being the said Earls demaund; and 24000 acres being the free offer from the Commissioners, was accepted: and this Contract made in the face of the Country at a publike Session, no man dissenting. Where the Commissioners doe in the last clause of that Contract covenant with the Earle,

to

3. Remember that the 21 of December the eighth yeere of the late Kings raigne, there was a Tax layd of five shillings the Acre first by divers Commissioners; \*but the 21 of February \* See the Letter following the King by his Letters upon the mediation of Sir Robert Killgrew commands the Commissioners to lay a greater Tax upon the Fennes, not respecting the interest of particular persons; so they were compelled by the Kings Letter, and the Earle of Lindsey's presence, then a commissioner, illegally to set a Tax of 13 s. 4 d. the Acre, notwithstanding the owners and commoners not consenting; this proves no necessity of a draining, but a Court power forcing on a project; but the undertaker saith, why taxed? the Kings Letter saith wherefore; the Tax could not be paid, neither did they intend it should, because set upon no particular mans person; the Commissioners proceeded as they began (being guided by Court-letters, in which narrow compasse the knowne Lawes of the land was then lapt up) without our consents, and against law, to sell our Lands to Courtiers, no known Artists in draining, the Com-

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mis-



to become suitors to the next following Parliament to settle this Drayning by an Act; which cleares the Earle and his Perticipants from being Projectors : This Record is also in M. Ellis his hands.

4. Observe that when the Tax was laid, and when the Contract was made, no one Commissioner had any interest as undertaker, nor in three yeares after, and so were competent Judges without exception.

ified their judgements, that seeing so much of the Court, they forgot they were in the countrey, or to be guided by the known Lawes.

5. The Country were so well pleased with the Drayning, and with the Earle that undertooke it, that he had no man a competitor for it; and in two yeares after the Contract, and before the worke began, no words of dislike appeared; and when the worke was begun, many thousands of the poore Commoners were employed in working, and much enriched by the Drayners mony; in those dayes no clamor was heard of, no mention of a project, but most men thinking it

missioners they say convenanted with the Earle to become suitors to the next following Parliament, to settle their draining. We hope the Parliament will not heare them disjunctive, but respite the undertakers petition untill the Commissioners joyne with them.

*To the fourth.*

4. Observe when the Tax was laid, the Earle of *Lindsey*, Sir *Robert Killegrewe*, and Master *Robert Long* was their Commissioner and produced the Kings first Letter, which commanded the Commissioners to lay a greater Tax, which so

*To the fifth.*

5. It is well known that the Countrey was best pleased with their own draining, they having many Drains, Goatts, and Sluces of their owne for that purpose, and neither did or would have ever sent for the Earle, Sir *Robert*, Sir *William Killegrewe* or Mr. *Long*, had they pleased to have been contented with that lot God had given them before the contract. Sir *Anthony Thomas* was a competitor, and sued to the Commissioners to draine the



it an impossible thing to carry away such vast bodies of water; did rather pitty, then envy the Undertakers.

straineth all competitors (read the letter) those poor that wrought had no interest, but under the Owners their Land lords, who would as willingly keep their Land lords Lands to themselves, if the Law upheld not propriety as work for them. Who reads the Kings Letters, remembers the Councell Tables power, will say it was then no time to complaine of Court projects; \* all that Winter they begun their work, deny it if they can, the Fenns was so dry that they might walk in most of them in a Sommer shoe, soe that we wonder where that vast body of water was they carry away; it pittied us to see Gentlemen, to whom God had given large portions, should consume it in a covetous desire after other mens rights.

6. After the contract was performed, and judged by the Commissioners of Sewers to be performed on the Earles part, and the Earle by them put into possession of 14000 Acres of the said Fenne Lands, as a part of his recompence for his great charge and hazard: and those 14000 acres divided amongst his participants, and by them planted, built on, plowed, sowed, reaped, for three Summers; a complaint was exhibited by some Owners, and Commoners, unto this present Parliament, against some of the Earles proceedings and while that complaint was depending before a Committee of Parliament: the complainers (jealous of their

the same lands for a fourth part \* Of which others: \* after that the Kings second Letter dated the 18. of April, in the 9. year of his reign, re- they have taken above a third.

those poor that wrought had no interest, but under the Owners their Land lords, who would as willingly keep their Land lords Lands to themselves, if the Law upheld not propriety as work for them. Who reads the Kings Letters, remembers the Councell Tables power, will say it was then no time to complaine of Court projects; \* all that Winter they begun their work, deny it if they can, the Fenns was so dry that they might walk in most of them in a Sommer shoe, soe that we wonder where that vast body of water was they carry away; it pittied us to see Gentlemen, to whom God had given large portions, should consume it in a covetous desire after other mens rights.

*To the sixth.*

6. Those here called Commissioners, was then themselves servants, and participants their own illegall proceedings have beene made appear (in the book called a *Relation, &c.*) those that pulled down their houses was none of the considerable owners and Commoners; prove it if they can; but those poore they so much enriched, who have been punished for their fault onely because riotously done; the Petitioners that complained to this Parliament, being many thousands of the owners, and Commoners, never waved the Justice of the house of Commons, \* but stood for the priviledge of the House against Bills, and Orders, of the

\* Such as disliked and complained, was fined and imprisoned by Order of Sewers and Councell Table Orders.

\* Witnesse their Lawes dated the 11. of August. 13. Caro. and the 19. of March. 9. Caro.

\* Witnesse Sir Geye Palmes his report hereto Printed.

these) wave the judgement of the Parliament, and became their own Judges; they pull downe the undertakers houses, (being near thirty in number) one whereof cost 3000 l. another 1500 l. the building, destroy their plantations, ruine their publique workes, throw their Tenants into Rivers, and burn their Corn, to the great damage of the Commonwealth. And thus by an unexampled violence threw the undertakers out of possession of the 14000 Acres a little before this Warre began, and have to this day detain'd this land to their owne use; and now have the confidence to desire that themselves may be the Drayners, after the work done by the Earle, and his participants, who have many of them adventured their whole estates in this publique work, so greatly advantageous to the Common wealth.

\* Witnesse the Orders Printed herewith.

\* Witnesse the Order dated the 12. of July, 1641.

\* Witnesse the verdict delivered to Mr. Goodin.

we cannot but have confidence still to maintaine our Ancient Rights; when a Parliament rules, which we ever loved, and they never liked.

*To the seventh.*

7. It is on all sides agreed at the Committee that the Draining is beneficiall to that Country, and to the Commonwealth; and it appeares on Record, that the Commissioners of sewers of those

Lords House preferred and procured, by the undertakers, during the cause depending the house of Commons; the Members of the House, and Ancient Justices of the Countrey, was put out of the Commission of the Peace, and their friends put in; and their friends made high Sheriffes, who violently beat and wounded the Commoners, and worried their Cattle; who peaceably kept their ancient possession, \* though they by force of the Councell Table Orders, and House of Lords Orders, interrupted our possessions, by plowing our grounds, and stopping all proceedings at law, which witnesseth a jealousie in them, and not in us; \* when the House of Commons opened the Law for us; we had severall actions against them, \* wherein we had judgement in some, and composition in others; we had the courage to oppose them, when project power ruled; and

7. That draining of grounds, hurtfully surrounded in a legall manner, is beneficiall, we deny not: but that our *Fennes* are all so we utterly deny; what was done by Act of Parliament, we dispute

those parts, did indeavour (in the thirty foure of *Henry* the eight, and in the seventeenth of *Elizabeth*) to Drayne the same Fennes which the Earle hath now Drayned ; It now rests in judgement before the Parliament, whether the Drayners that have done so great a good, at such great charge, and hazard, shall have their Lands according to their contract settled on them? Or whether those Lords and Owners that have (to the scandall of the Nation) destroyed those publique workes, shall reap the fruit of their labours, and have the Drayners Lands to reward them for their mischiefe.

dispute not ; but that they who have opposed all Parliament proceedings ; and forced on a designe contrary to Acts of Parliaments, should expect a Parliaments favour we wonder at. Whether their Court projects forced on by an Arbitrary power ; or our legall maintaining of our proprieties, be most scandall to the Nation, let the Reader judge. They question whether their labours shall bee lost or no, if they had done what they unjustly pretend ; who set them at work, ought to pay them their wages. A Theefe steales a leane horse ; one as necessary receiveth him, and keeps him in his ground privately while hee is fat ; they are both

\* The Earle of Dorset in a Court of Sewers at Boston said, never look for a Parliament whilest he lived.

taken by the owner ; the principall is hanged ; is it just the necessary should scape, and have the horse because he fattened him ?

*To the eighth.*

8. If those Lords and Owners that would now become Drayners, had in those dayes understood the Art of Drayning : Or had thought it a worke easily to be effected : Or had valued those Fenne Lands then, as they now doe, certainly they would have paid in the Tax of 3 s. 4 d. an Acre ; and so doing, they might then have Drayned their own Fennes themselves, and never been troubled by the Earle or his participants. Tis also very

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8. Observe here Sir *William* alloweth that the owners would draine themselves if they might, who are as good Artists in draining as the Earle of *Lindsey*, or Sir *William Killigrew* : those Commoners that complaine, are such poore simple people, who have no interest, but under us whose Tenants they are ; their hands was surreptitiously got by two Alehouse keepers, who went from Town to Town, and House to House.



considerable, that the Major part of the poor Commoners doe complaine to the Committee for reliefe, against the oppression of most of those rich men that now oppose the Drayners, and would be Drayners themselves.

House, and proffered summes of money, for the gaining of such hands We hope we shall have reparation against those scandalous procurers and prosecutors of these Petitions, it is good reason every man should make the best of his owne.

*To the ninth.*

9. The Earle did proceed in his Contract according to the Lawes of Sewers, and in his work according to his Contract, and according to precedents of former Draynings, encouraged, and settled by former Parliaments, and his participants by their large propositions lately made upon the Treasurie for an Accommodation, have manifested their Love unto the Country; who in requitall, have returned nothing but clamors of injuries done them, which they can never prove. The Drayners doe therefore appeale to the justice of the Parliament for reparation of damages received on both sides, as shall appeare upon proofe before the Committee, and for such a settlement of the Drayning as may be most beneficiall to the Common-wealth.

9. If the Earle and his participants conceive they proceeded legally, we will joyne with them at faire tryalls at the Law; what we prove by evidences and witnesse is improperly called clamors we shall never decline the Parliaments Justice; we who are the charge bearers of the Common wealths conceive that such drayning as is most for our advantage, is most for the Commonwealths benefit.

FINIS.

## CHARLES R.

## LETTER I.

**R**ight-trusty and right-wel-beloved Cousins and Counsellors, and trusty and right-wel-beloved, and trusty and wel-beloved, We greet you wel. Whereas We have formerly by Our several Letters signified unto you Our pleasure and resolution to have that whole level of Fenns and surrounded grounds (lying in Our County of *Lincoln* only) fully and entirely dreyned, and did recommend unto you several persons to be Undertakers of the work (whom we were induced to nominate for that purpose, by the mediation of Our trusty and wel-beloved Servant Sir *Peter Killigrew* Knight, Vice-Chamberlain to Our deereft Consort the Queen) who have proceeded accordingly, with that part of the Levell which lyeth on the North-east side of the River of *Witham*; and We are stil resolved that all the other part of the Level, not mentioned in the former Commission, wherein Sir *Anthony Thomas* is an Undertaker, shall be proceeded withall (the eight hundred Fen only excepted.) And whereas We understand, that you have lately had several meetings about the same, and have already given some beginning thereunto; but that by the averfenels of some, and unwillingness of others to contribute to the charge of the work according to the quality and condition of their Lands, the Tax which you have laid is much too little (because, if it should be paid, it will not suffice to do a sixth part of the work) and the Law thereof made with such restrictions and exceptions of Severals and Lands, of no better condition then that which is taxed; that a great part of the Levell shall be dreyned for nothing; and that which is taxed not suffice to contribute a proportion of Land competent to defray the charge of the work, much less to reward the Undertakers for their labour and hazard: We therfore, well knowing how honorable, and how profitable for the common good, works of this nature are, and being resolved to have this speedily and effectually proceeded withall, have thought fit, for your encouragement, to signifie Our gracious acceptance of your endeavours herein; and likewise to let you know, that We expect from you, that you forthwith amend all errors or ambiguities (if any such there be) of the law of Tax already made, and review (if a new view be necessary) all such other parts of the Levell, as well Severals as Commons, which were formerly omitted, and which may receive benefit by the dreyning; and that you lay such a Tax upon the same, as (if it be paid) may defray the charge of the work, and to recompence the Undertakers for their pains, without any respect to the interest of particular persons, or consulting the owners, where (by your own view) you finde their land so surrounded or annoyed with water, that it shall receive benefit

by the dreyning: for the judgment of you Our Commissioners must be the rule of proceeding in this case, and not the consent of the owners, whose averfeness must not prejudice the publick good; And these Our Letters shall be your sufficient warrant and discharge in this behalf. Given under Our Signet at our Palace of *Westminster* the twelfth day of *February*, in the eighth yeer of Our Reigne.

To Our right trusty and right welbeloved Cousin and Counsellor Robert Earl of Lindsey, Our High Chamberlain of England; and to Our right-trusty & right-welbeloved Cousin Theophilus Earl of Lincoln; and to Our right-trusty and welbeloved Muntagu Bartu Lord Willoughby; and to the rest of Our Commissioners of Sewers in the County of Lincoln.

Exam.  
Rosseter, Cler. Sewer.

## CHARLES R.

LETTER II. **R**ight-trusty and right-welbeloved Cousins and Counsellors, and trusty and right-wel-beloved, and trusty and wel-beloved, We greet you well. Whereas by Our late Letters We have signified unto you Our resolution for the present dreyning of all that part of the Level of Fens lying in the County of *Lincoln* (only the eight hundred Fen excepted) which is not included in Sir *Anthony Thomas* his Undertaking, and have recommended particularly unto your care the effectuall proceeding of the businesse; We have now therefore thought fit to recommend unto you, Our right-trusty and wel-beloved Cousin and Counsellor *Robert Earl of Lindsey* Our high-Chamberlain of *England*, Our trusty and wel-beloved Servant Sir *Robert Killigrew* Vice-Chamberlain to our deereft Consort the Queen, Our trusty and wel-beloved Sir *William Killigrew* Knight, and Our wel-beloved Servant *Robert Long* Esquire, to be Undertakers for the doing of the work, they with others their friends and Adventurers being willing to undergo the charge thereof; provided, they may have such proportions of land assigned unto them, as shall be sufficient to defray so great an expence, and to recompence them for their adventure, hazard and pains. And We do expect, that you accept of our said Cousin, and the rest before-named, to be Undertakers, and that you proceed forth-with, without unnecessary difficulties and delays, to make a bargain and contract with them for all the remaining part of the Level (the eight dundred Fen only excepted as aforesaid). And out of Our Royall care of the work, and the good and welfare of Our Subjects, which we know will be much advanced by this  
and



and other works of this nature, We do command all manner of persons to forbear to make any particular bargains or works, to be taken in hand to the prejudice of this intended generall work : And We further require you to aid and assist them from time to time with your Authority, in all reasonable and lawfull things requisite for the execution of the work, to the uttermost of your power, and extent of your Commission: And We for our part, will not be wanting to further this designe, by granting any Priviledges, Liberties and Immunities, or any other thing that shall be requisite, and reasonably desired of Us by you Our Commissioners, or Our said Cousin and the rest of the Undertakers. Given under Our Signet, at Our Palace of *Westminster*, the eighteenth day of *April*, in the ninth year of Our Reign.

*To our right trusty and right wel beloved Cousin Theophilus Earl of Lincoln, and to Our right-trusty and wel beloved Muntagu Lord Willoughby, and to the rest of Our Commissioners of Sewers in Our Countie of Lincoln.*

*Examinat.  
Rossiter, Cler.Sewer.*

## CHARLES R.

LETTER **R**ight-trusty and right-wel-beloved Cousins, right-trusty  
III. and wel-beloved, and trusty and wel-beloved, VVe greet you well. VVe have by Our severall Letters formerly declared Our pleasure and resolution for the dreyning of that Level of Fens lying in Our County of *Lincoln*, within the extent of your Commission ; which We wel know to be a work of publick consequence, and for the generall good of that whole Country, and have therefore been ready to advance the same from time to time, as there hath been occasion for our favour and power to be used therein : To which purpose VVe have recommended unto you severall persons to be Undertakers for the dreyning of the same Levell : By whom, although there hath been some progress made ; yet VVe finde the last and most materiall part to be done by you, to be still wanting, which is the conclusion of the bargain for a recompence to be assigned and set out in land, for the charge and labour incident to so great a work. And because VVe desire to give the Country all reasonable satisfaction, and to take away all colour of exception, or pretence of further delay, VVe have thought fit to appoint Our right-trusty and right-wel-beloved Cousin and Counsellor, *Robert Earl of Lindsey* Our high-Chamberlain of *England*, to be the sole Undertaker for the dreyning of the whole Levell within the extent of your

Commission, Requiring you at this meeting, or as soon as may be, to make a generall Bargain with him for the said whole Level, and to decree unto him such an ample recompence in land, as the charge, adventure and labour of so great a work shall deserve; and therein to press upon him no other conditions for the performance of the dreyning, then such as other Undertakers in the like kinde are obliged unto. VVe are assured that Our said Cousin is a person most agreeable to you, and therefore as well out of that consideration, as in confidence of his ability to discharge a service of this nature, VVe have made choyce of him to be the Undertaker, expecting your ready conformity and free assent to such things as shall be by him reasonably desired for the advancement of a work conducing to your own happines, and the honour of Our Government. Given under Our Signet at Our Palace of *Westminster* the second day of *April*, in the eleventh year of Our Reign.

*To our right trusty and right-wel beloved Cousin  
George Earl of Rutland, and to Our right-  
trusty and wel-beloved Muntagu Lord Wil-  
loughby, and to Our trusty and wel beloved  
the Commissioners of Sewers for the Level of  
Fens lying in Our County of Lincoln.*

*Examiner.  
Rossiter, Cler. Sewer.*

## CHARLES R.

LETTER **T**Rusty and wel-beloved, VVe greet you well. VVheras by  
IV. Our late Letters under Our Signet, VVe have recommend-  
ed unto you Our right-trusty, and right-wel-beloved Cousin and Coun-  
sellor *Robert* Earl of *Lindsey* Our high-Chamberlain of *England* to be the  
sole Undertaker for the dreyning of the Levell of Fens lying Our County  
of *Lincoln*, within the extent of your Commission. And whereas accord-  
ingly; at the last meeting, you have made him an offer of twenty four  
thousand Acres out of the ground then taxed, which he hath accepted  
upon such conditions as other Undertakers are tyed unto in the like case:  
But forasmuch as Our said Cousin is now imployed upon Our most im-  
portant Service, so that he cannot be present to make the Contract with  
you: VVe have thought fit to recommend unto you Our right-trusty and  
wel-beloved *Muntagu Lord Willoughby* to treat, contract and agree with  
you, in the name and behalf of Our said Cousin his Father; Requiring  
you at this meeting to perfect the Contract for the said twenty four thou-  
sand Acres, under your Hands and Seals (to which VVe will be ready to  
give

give Our Royall Assent :) And therein We expect that there be no other conditions imposed upon Our said Cousin, then such as other Undertakers are tyed unto, and as shall be just and reasonable; which VVe are assured he will be ready to perform as if he had been personally present at the making of the Contract. Given under Our Signet at Our Palace of *Westminster*, the twentieth day of *May*, in the eleventh yeer of Our Reign.

To Our Trusty and wel-beloved the Commissioners of Sewers for the Levell of Fens lying in Our County of Lincoln, on the South-side of the River of Witham.

Examinat.  
Rosliet, Cler. Sewer.



## An Order from the Lords of the Council.

**I**N the Inner Star-Chamber the twenty fifth of October, 1639. present the Lord Archbishop of Canterbury, Lord Keeper, Lord Treasurer, Lord Goring, Lord Cottington, Lord Newburgh, Mr. Treasure, Mr. Secretary Cook, Mr. Secretary Windebanck. Upon the considration this day had of the Complaint exhibited by *Robert Long* Esquire, on the behalf of the Earl of *Lindsey* and others, Undertakers for the dreyning of the great Levell of the Fens in the County of *Lincoln*, against *Thomas Hall* Gentleman, *Richard Toller* and *Thomas Burton*; forasmuch as it appeared, that the said *Burton* and *Toller* had in a riotous and tumultuous manner disturbed the possession of the said Earl and the rest of the Undertakers in certain grounds in *Billingborow* Fens, decreed and setled by the Commissioners of Sewers: and the said *Hall* had in contempt and violation of the said Decrees of Sewers (though not altogether in so riotous a manner as the rest) disturbed the Possession of the said Earl and the rest of the Undertakers, in certain grounds lying in *Donnington* Fen. All which refractory proceedings of theirs appeared to be made in contempt of an Order of this Board, of the three and twentieth of *July* 1637, whereby it was especially provided, That the said Undertakers should quietly and without interruption enjoy all the Lands decreed by the said Commissioners of Sewers: Their Lordships well knowing how much it imported the Service of His Majesty and the Publick, besides the particular Interest of the Undertakers, not to permit and suffer a work of this nature to be disturbed or indangered



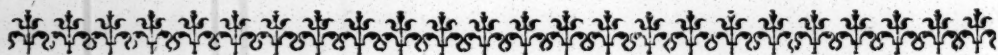
by the insolency of any turbulent or refractory persons ; It was now therefore resolved, That the said *Toller* and *Burton*, for their miscarriage, should stand committed to the prison of the Fleet ; and that the said *Hall*, for his contempt against the said Decree of the said Commissioners, and the afore-said Order of the Board, should be continued in the Messengers custody untill further Order from the Board. Lastly, It is ordered, That none of them shall be discharged and set at liberty, untill sufficient Bonds first given to His Majesties use, not to disturb the Possession of the said Earl of *Lindsey*, and the rest of the said Undertakers, but to conform themselves in all particulars to the Decrees of the said Commissioners, and Orders of this Board. And if the said *Hall*, *Toller* or *Burton* have any just cause further to complain concerning the matters in differences, they may resort to the Commissioners of Sewers for their relief, before whom the same is particularly determined.

*Exam.*

MEAUTYS.

*Thomas Burton* is bound in a bond of 50 l. to His Majesties use, Dated about the second of *Novemb.* 1639. to perform this condition following, by vertue of the said Order.

**T**He Condition of this Obligation is such, That if the above bounden *Thomas Burton* shall neither by himself, nor by his means, privity or procurement from henceforth any way disturb or question (otherwise then by complaint in an orderly way before the Commissioners of Sewers) the Possession of the Right-Honourable Robert Earl of *Lindsey*, or his Assignes, in any of the Fen-grounds in the County of *Lincoln*, adjudged to the said Earl by the Decree of Sewers ; but shall from henceforth conform himself to the Decree of the said Commissioners, and former Orders of this Board, Taht then this present Obligation to be voyd, and of none effect ; or otherwise to stand and remain in full force and vertue.



*Mercurii 16 Februarii, 1641.*

**T**His House being this day informed, That the Right-Honourable the Earl of *Lindsey* Lord great-Chamberlain, had some of his Lordships Tenants and Assignees sued in the Courts of Kings Bench

Bench and Common Pleas, wherein his Lordship was concerned in his Free-hold, and was his Lordships immediate title, as the Court was certainly informed both by the said Earl of *Lindsey* in his own person (who demanded his Priviledge,) and also was made good by Affidavit made before the Judges of this Court; and for that cause, these Courts allowed the priviledge of the Earl as he demanded it. This House therefore well approved what the Judges of these two Courts have done herein, And do Order, That no such Suit shall be prosecuted against the Tenants and Assignees of the said Earl of *Lindsey*, claiming under his Lordships right of Free-hold, and shall not be pressed to plead or proceed in these Suits, during the continuance of the Priviledge of Parliament due unto the said Earl, and other the Peers and Members of this House.

*Vera Copia.*

*Joh. Brown Cler. Parliament.*

Die Lunæ 12 die Julii, 1641.

**T**He House of Commons doth declare, and so Order, That no Petition or Bill depending here, shall cause any stop in any Proceedings in the Courts of Justice at Westminster, or else-where, upon any matter contained in the said Bill and Petition, without speciall Order from this House.

Hen. Elsyng Cler. Domus Com.

Die Sabbati 10 Julii, 1641.

**I**T is this day Ordered by the House of Commons, That it be referred to the Committee appointed by the said House to take Mr. Smarts businesse into consideration, to consider how far the Adventurers in the Levell between Bourne and Kyme East, have trenched upon the Priviledges of the House in entring upon the parts of the Commons, by an Order from the Lords, during that the Commons had a Petition here depending.

Hen. Elsyng Cler. Domus Comm.

*Vera Copia.*

Die

Die Martis 29 Iunii, 1641.

Sir Guy Palmes Reports the Cause concerning an Order made in the Lords House between the Tenants and Assignes of the Earl of Lindsey, concerning the division of Acres in the Fen-grounds in Lincolnshire.

**T**He Earl of Lindsey was in possession of fourteen thousand Acres of ground in this Fen: There was an Order made in the Lords House, That the Earl of Lindsey and all claiming under him, should enjoy those Lands til the High Court of Parliament did by Order hear the Cause there, or that they were otherwise ordered in some other Court. The Committee upon this, did conceive, that the Lords did appropriate and assume to themselves the sole Hearing of this Cause, excluding the Commons; whereas the controversie concerning those Lands, was at that time when this Order was made, depending before the House of Commons. The Lords took notice of this Cause upon a bare Complaint, without transmission of this Cause, or without acquainting this House by a conference with the same. This fourteen thousand Acres of Fen-ground is firm land, and many thousand persons have interest in it; several Suits in Law were depending before it came to Parliament: The Commons thought fitting to make their Addresses to this House, being the representative Body of the Commons. Therefore the Committee vote two things, none dissenting.

1. That the Order made by the Lords April. 6. is a breach of the Priviledge of this House; and that the Commons are not bound by the said Order.
2. That a Conference be had with the Lords touching the same.

Hen. Scobell Cler. Parliament.





*A Breefe Relation by the Commoners  
in Lincolnshire, of their Legall  
Interest, and that nothing of  
Interest the Undertakers  
have in Law.*

**T**he owners and Commoners in the Fenns, between Bourn & Kyme Eae in the County of Lincoln, by reason of their Seniorities, Resiances, and Inhabitants in the Townes, there, have time out of minde, without memory of man, taken all manner of profits arising out of the said Fenns and Commons, both for sustentation of their persons and Common of Pasture for their Cattell, (as appurtenant to their Seniores and Resiances, and are, and ever have been (by Custome) charged by reason of their Seniorities, with the repairing of many Draines, Watercourses, Banks, Sleuces, and Goats, for the bettering and making them so usefull for them, and for watering severall grounds in many of the said Townships, which they have been much interrupted in by severall undertakers this twenty years in making of new workes, a designe continued at Court to deprive us of our ancient Rights, contrary and against the known Lawes of the Land.

1. By the 9. H. 3. cap. 15. no Free-man shall be distreined to make Banks, but such as were of old time and of right have been accustomed to make them in the time of K. H. our Grandfather.

*Magna  
Charta.*

2. Also

2. Also in the 16. Chap. the same year provides that no Banks shall be defended from henceforth, but such as were in defence in the time of H. our Grandfather, by the same places and bounds as they were in his time.

By the 15. and 16. Chapters the Undertaker shall not tax me nor any ground to make new Banks that before were not in charge.

This is manifested to be the true meaning of *Magna Charta*, by the succeeding Statute (*viz.*) the 25. and 45. *Edw.* 3. 21. *R.* 2. 1. *H.* 4. and especially the 12. of *Edw.* 4.

By the 23. *H.* 8. chap. 5. the workes and words mentioned in the 6. and 7. Chapters of the 12. *Edw.* 4. were united and knit up in one standing Commission, commonly called a Commission of Sewers, and all those words and workes are subject to the Survey of the Commissioners mentioned in that Statute of 23. *H.* 8. But thereby the workes and words mentioned in the 6. chap. 12. *E.* 4. are to be pursued as proper to the 6. *H.* 6. chap. 5. and the fautes and words mentioned in the 7. chap. *Edw.* 4. are to be pursued according as is set forth in the 7. Chapter; for it is commanded by the sayd 23. *H.* 8. that the Justices shall doe therein as to the Kings Justices appertaineth, after the Lawes and Statutes of our Realme, which includes the sayd 6. and 7. chap. *E.* 4.

† Observe the Undertakers proceeded not by Jury, but by directions of the Kings Letters.

\* They layd uncertaine tax: upon nobody: of purpose it might not be payed.

† The practice is, and ought to be by Jury thus; is there a Delinquent found by Inquisition upon the substance of the 6. chap. of *Edw.* 4? Let the Commissioners proceed against him for the repaire, or making new that which is so found to be hurtfull in his default \* by a tax, assesse, distresse, or sale.

Is there a Delinquent found by Inquisition upon the nuisance mentioned in the 7. chap. of *Edw.* 4? Let them proceed against them by giving them by *seis facies*, halfe a years time to remove or correct the sayd nuisance as the Justices appoint upon paine of 100 Marke to be forfeited.

Thus you see the power of Commissioners by the 23. *H.* 8. chap. 5. is limited in matter of fact by the former intentions of the 6. and 7. chap. of *E.* 4. and they are limited in matter of forme by the words of the 23. *H.* 5. which restraines

strains them to doe as belongs to the Kings Justices according to the Lawes, Customes, and Statutes of this Kingdome. ¶ Now if Commissioners of Sewers be tyed to this matter of fact and forme, examine how the Undertakers by their new Law can take our Inheritance, without our consent and liking, to make new Draines, Banks, and Goats, for the satisfying their owne covetous desires, notwithstanding these limitations the innovating Undertakers would shelter themselves by words in the sayd 23. H. 8. viz. according to your discretions, and according to the Lawes of Rumney-Marsh in that Statute expressed, implying by the word discretion, that they may doe what they please; which glosse confounds the text, for such discretion is absolute and apparent indiscretion, not supportable by that Statute, nor any other Law, their discretions being to be guided by Law and Custome, as formerly expressed.

And as concerning their imaginary proceedings according to the Lawes of Rumney-Marsh, that is most ridiculous; for I pray you observe the Charter granted the 36. yeare of H. 3. to the men of Rumney-Marsh, and you will finde that nothing is granted, but what was time out of minde in use (excepting a restraint to the Shiriffe for meddling with distresses.)

Hereby yee see Custome time out of minde begets a Rule, and was the ground of this Charter, which Charter was the ground of the Commission of 42. H. 3. to Hen. Bathama, to survey the Walls and Water Courses, and to cause them to be repaired by these that are bound and charged with the reparation of them; here is *nihil novi*, but *de novo*, as accustomed to be repaired or new made, agreeing to *Magna Charta* above specified.

Thus you see the projects of drayning hath no foot hold or congruency with Custome, use, or any Law or word of Statute before recited, but is a meere Arbitrary proceeding against those Lawes.

They plead that they have layd out vast summes of Mooney.

To



